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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/567,313	02/03/2006	Saied Abedi	FUJL 22.279 (100794-01011)	5056
26304 7590 07/22/2009 KATTEN MUCHIN ROSENMAN LLP 575 MADISON AVENUE NEW YORK, NY 10022-2585			EXAMINER BALAOING, ARIEL A	
			ART UNIT 2617	PAPER NUMBER
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/567,313	<b>Applicant(s)</b> ABEDI, SAIED	
	<b>Examiner</b> ARIEL BALAOING	<b>Art Unit</b> 2617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 03 April 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-32 and 34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-32 and 34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 March 2008 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### ***Response to Arguments***

1. Applicant's arguments filed 04/03/2009 have been fully considered but they are not persuasive.
2. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Furthermore, it is noted that the KSR vs. Teleflex decision forecloses the argument that a specific teaching, suggestion, or motivation is required to support a finding of obviousness. See the recent Board decision *Ex parte Smith*, --USPQ2d--, slip op. at 20, (Bd. Pat. App. & Interf. June 25, 2007) (citing *KSR*, 82 USPQ2d at 1396). Therefore, the combination of VADGAMA in view of NAIM would have been obvious to a person of ordinary skill in the art as articulated in the previous Office Action.

Regarding the applicant's arguments that:

*"Correspondingly, paragraph [0031] of Naim et al., as cited by the Examiner for allegedly suggesting the claimed data amount comparison feature, only includes description of a base station allocating resources. Thus, Naim et al., as cited and relied*

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*upon by the Examiner--and the proposed combination of references--fail to disclose or even suggest a base station transmitting a relative indicator indicating how full one of the user equipments' data buffer is in comparison to the data buffers of the other of the user equipments" (see page 13 of the remarks).*

3. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

It is noted that selecting of a base station based on a transmitted relative indicator is taught by VADAGAMA (i.e. congestion based selection), while NAIM discloses resource determination (a relative indicator) based on comparison of buffer status and therefore, the combination of VADAGAMA and NAIM disclose the invention as claimed.

#### ***Terminal Disclaimer***

4. The terminal disclaimer filed on 04/03/2009 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of copending Application 10/565,866 has been reviewed and is accepted. The terminal disclaimer has been recorded.

#### ***Claim Rejections - 35 USC § 103***

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

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6. Claims 1-7, 9, 11-21, 23-32, and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over VADGAMA (US 2003/0083069 A1) in view of NAIM et al (US 2002/0093953 A1).

Regarding claim 1, VADGAMA discloses a method of selecting an active base station for use during soft handover, the active base station being for receiving data from a plurality of user equipments (abstract), the method comprising: determining an amount of data (paragraph 31-38, 45, 46; various congestion levels are measured); comparing the amounts of data to obtain a relative indicator (paragraph 31-38, 45, 46, 75-78, 93-97, 105; comparison of congestion can be based on history and weighted base stations); selecting a base station as an active base station for one user equipment based on the relative indicator (abstract; paragraph 13, 14, 144, 145; congestion based selection). However, VADGAMA does not expressly disclose determining the amount of data in the data buffer of each of the user equipments; comparing the amount of data in the data buffers of the user equipments to obtain a relative indicator, the relative indicator indicating how full one of the user equipment's data buffer is in comparison to the data buffers of the other user equipments. In the same field of endeavor, NAIM discloses determining the amount of data in the data buffer of each of the user equipments (paragraph 27, 28; mobile station sends information regarding the queue length of the mobile transmitter); comparing the amount of data in the data buffers of the user equipments to obtain a relative indicator, the relative indicator indicating how full one of the user equipment's data buffer is in comparison to the data buffers of the other user equipments (paragraph 31; resource

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allocation depending on various factors including the amount of data in each station).

Therefore it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify VADGAMA to include the teachings of NAIM, since both inventions relate to reducing congestion within a system (see NAIM - paragraph 9 disclosing buffer levels effecting packet congestion and VADGAMA states that various methods of congestion (such as those disclosed by NAIM) can be used for determination of an active base station (VADGAMA, paragraph 86, 87).

Regarding claim 2, see the rejections of the parent claim concerning the subject matter this claim is dependent upon. The combination of VADGAMA and NAIM further discloses wherein the relative indicator is an indication of how full the one user equipment's buffer is in comparison to the average (VADGAMA – paragraph 105; NAIM – paragraph 27, 28; VADGAMA shows wherein the relative indicator is an indication of a congestion measurement in comparison to an average, while NAIM shows wherein congestion occurs based on a indicated buffer level of a mobile device).

Regarding claim 3, see the rejections of the parent claim concerning the subject matter this claim is dependent upon. The combination of VADGAMA and NAIM further discloses wherein the relative indicator is an indication of how full the one user equipment's buffer is in comparison to the minimum (NAIM – paragraph 27; segment rate).

Regarding claim 4, see the rejections of the parent claim concerning the subject matter this claim is dependent upon. The combination of VADGAMA and NAIM further

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discloses wherein a plurality of relative indicators are obtained for each user equipment (NAIM - paragraph 31).

Regarding claim 5, see the rejections of the parent claim concerning the subject matter this claim is dependent upon. The combination of VADGAMA and NAIM further discloses wherein the comparing is carried out by the base station (VADGAMA – paragraph 31-38, 45, 46; base station provides data comparison; NAIM - paragraph 31).

Regarding claim 6, see the rejections of the parent claim concerning the subject matter this claim is dependent upon. VADGAMA further discloses further comprising transmitting each relative indicator for each user equipment from the base station to that user equipment (paragraph 31, 32, 53, 54, 93-97, 106; congestion determination broadcast over the broadcast channel to the mobile devices).

Regarding claim 7, see the rejections of the parent claim concerning the subject matter this claim is dependent upon. VADGAMA further discloses wherein the selecting of a base station is carried out by the user equipment (paragraph 31, 32, 53, 54, 99, 112, 113, 150, 154, 155).

Regarding claim 9, see the rejections of the parent claim concerning the subject matter this claim is dependent upon. The combination of VADGAMA and NAIM further discloses wherein a user equipment determines an amount of data in its data buffer and transmits an indication of the amount of data to the base station (NAIM – paragraph 27, 28).

Regarding claim 11, see the rejections of the parent claim concerning the subject matter this claim is dependent upon. VADGAMA further discloses wherein the base

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station is selected as the active base station based on a history of the or each relative indicator (paragraph 16, 17, 36, 75-78, 86, 87, 93)

Regarding claim 12, see the rejections of the parent claim concerning the subject matter this claim is dependent upon. VADGAMA further discloses wherein the base station is selected as the active base station based additionally on a measure of radio channel conditions (paragraph 16, 17, 36, 75-78, 86, 87, 93, 154).

Regarding claim 13, see the rejections of the parent claim concerning the subject matter this claim is dependent upon. VADGAMA further discloses wherein the base station is selected as the active base station based on a history of radio channel conditions (paragraph 16, 17, 36, 75-78, 86, 87, 93)

Regarding claim 14, see the rejections of the parent claim concerning the subject matter this claim is dependent upon. VADGAMA further discloses wherein the selecting of a base station is carried out by the user equipment, and the method further comprises transmitting an indication of the selected base station from the user equipment to the base stations (paragraph 31, 32, 53, 54, 99, 112, 113, 154, 155).

Regarding claim 15, see the rejections of the parent claim concerning the subject matter this claim is dependent upon. The combination of VADGAMA and NAIM further discloses further comprising scheduling uplink transmissions in dependence on each relative indicator (NAIM – paragraph 26, 27, 31, 32).

Regarding claim 16, see the rejections of the parent claim concerning the subject matter this claim is dependent upon. VADGAMA further discloses wherein each user equipment determines a rate and/or time at which it transmits data to the base station



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based on each relative indicator for that user equipment (paragraph 146, 147; time of transmission based on indicator).

Regarding claim 17, VADGAMA discloses a base station for receiving data from a plurality of user equipments (abstract), the base station comprising a determining unit which determines an amount of data (paragraph 35); a comparing unit which compares an amount of data to obtain a relative indicator (paragraph 38, 41, 75-78, 93-97, 105; comparison of congestion can be based on history and weighted base stations); a transmitting unit which transmits the relative indicator (paragraph 37, 41); a receiving unit which receives a signal indicating whether the base station has been selected as an active base station for a user equipment (paragraph 36, 42, 145, 154, 155); and an allocating unit which allocates a channel to the user equipment if the base station has been selected as an active base station (paragraph 13, 14, 38, 44, 144, 145,; congestion based selection). However, VADGAMA does not expressly disclose a determining unit which determines the amount of data in the data buffer of each of the user equipments; a comparing unit which compares the amount of data in the data buffers of the user equipments to obtain a relative indicator, the relative indicator indicating how full one of the user equipment's data buffer is in comparison to the data buffers of the other user equipments. In a similar field of endeavor, NAIM discloses a determining unit which determines the amount of data in the data buffer of each of the user equipments (paragraph 27, 28; mobile station sends information regarding the queue length of the mobile transmitter); a comparing unit which compares the amount of data in the data buffers of the user equipments to obtain a relative indicator, the relative

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indicator indicating how full one of the user equipment's data buffer is in comparison to the data buffers of the other user equipments (paragraph 31; resource allocation depending on various factors including the amount of data in each station). Therefore it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify VADGAMA to include the teachings of NAIM, since both inventions relate to reducing congestion within a system (see NAIM - paragraph 9 disclosing buffer levels effecting packet congestion and VADGAMA states that various methods of congestion (such as those disclosed by NAIM) can be used for determination of an active base station (VADGAMA, paragraph 86, 87).

Regarding claim 18, see the rejections of the parent claim concerning the subject matter this claim is dependent upon. The combination of VADGAMA and NAIM further discloses wherein the relative indicator is an indication of how full the one user equipment's buffer is in comparison to an average (VADGAMA – paragraph 105; NAIM – paragraph 27, 28; VADGAMA shows wherein the relative indicator is an indication of a congestion measurement in comparison to an average, while NAIM shows wherein congestion occurs based on a indicated buffer level of a mobile device).

Regarding claim 19, see the rejections of the parent claim concerning the subject matter this claim is dependent upon. The combination of VADGAMA and NAIM further discloses wherein the relative indicator is an indication of how full the one user equipment's buffer is in comparison to a minimum (NAIM – paragraph 27; segment rate).

Regarding claim 20, see the rejections of the parent claim concerning the subject matter this claim is dependent upon. The combination of VADGAMA and NAIM further discloses wherein the comparing unit is arranged to produce a plurality of relative indicators for each user equipment (NAIM – paragraph 31).

Regarding claim 21, see the rejections of the parent claim concerning the subject matter this claim is dependent upon. VADGAMA further discloses wherein the transmitting unit is arranged to transmit each relative indicator for each user equipment from the base station to that user equipment (paragraph 31, 32, 53, 54, 93-97, 106; congestion determination broadcast over the broadcast channel to the mobile devices).

Regarding claim 23, VADGAMA discloses a user equipment (abstract) comprising: a data buffer (paragraph 2; a data buffer is inherently necessary when transmitting data from a user terminal to a base station); a transmitting unit **256, 288** which transmits to a base station information (paragraph 31, 32, 53, 54, 93-97, 106; congestion determination broadcast over the broadcast channel to the mobile devices); a receiving unit **236, 266** which receives from a base station a relative indicator (paragraph 37, 41); and a selecting unit **248, 278** which selects the base station as an active base station based on the relative indicator (paragraph 31, 32, 53, 54, 99, 112, 113, 149, 154, 155). However, VADGAMA does not expressly disclose wherein the transmitting unit transmits to a base station information concerning an amount of data to be transmitted; and wherein the relative indicator indicates how full the data buffer is in comparison to the data buffer of other user equipments served by that base station. In a similar field of endeavor, NAIM discloses and a data buffer (paragraph 27); a

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transmitting unit that transmits to a base station information concerning an amount of data to be transmitted (paragraph 27, 28; mobile station sends information regarding the queue length of the mobile transmitter); and wherein a relative indicator indicates how full the data buffer is in comparison to the data buffer of other user equipments served by that base station (paragraph 31; resource allocation depending on various factors including the amount of data in each station). Therefore it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify VADGAMA to include the teachings of NAIM, since both inventions relate to reducing congestion within a system (see NAIM - paragraph 9 disclosing buffer levels effecting packet congestion and VADGAMA states that various methods of congestion (such as those disclosed by NAIM) can be used for determination of an active base station (VADGAMA, paragraph 86, 87).

Regarding claim 24, see the rejections of the parent claim concerning the subject matter this claim is dependent upon. The combination of VADGAMA and NAIM further discloses further comprising a determining unit which determines the amount of data in the data buffer, wherein the information concerning the amount of data to be transmitted is an indication of the amount of data in the data buffer (NAIM – paragraph 26, 27).

Regarding claim 25, see the rejections of the parent claim concerning the subject matter this claim is dependent upon. The combination of VADGAMA and NAIM further discloses further comprising a determining unit which determines an amount of data to be transmitted in a call, wherein the information concerning the amount of data to be

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transmitted is an indication of the amount of data to be transmitted in the call (NAIM – paragraph 26, 27).

Regarding claim 26, see the rejections of the parent claim concerning the subject matter this claim is dependent upon. VADGAMA further discloses wherein the receiving unit is arranged to receive a plurality of relative indicators from a base station (paragraph 154, 155).

Regarding claim 27, see the rejections of the parent claim concerning the subject matter this claim is dependent upon. VADGAMA further discloses further comprising a storing unit which stores a history of the or each relative indicator, wherein the selecting unit is arranged to select a base station as an active base station based on a history of each relative indicator (paragraph 16, 17, 36, 75-78, 86, 87, 93).

Regarding claim 28, see the rejections of the parent claim concerning the subject matter this claim is dependent upon. VADGAMA further discloses wherein the selecting unit is arranged to select the base station as the active base station based additionally on a measure of radio channel conditions (paragraph 16, 17, 36, 75-78, 86, 87, 93, 154).

Regarding claim 29, see the rejections of the parent claim concerning the subject matter this claim is dependent upon. VADGAMA further discloses further comprising a storing unit which stores a history of radio channel conditions, wherein the selecting unit is arranged to select the base station as the active base station based on a history of radio channel conditions (paragraph 16, 17, 36, 75-78, 86, 87, 93, 154).

Regarding claim 30, see the rejections of the parent claim concerning the subject matter this claim is dependent upon. VADGAMA further discloses comprising means for a transmitting unit which transmits an indication of the selected base station. (paragraph 31, 32, 53, 54, 99, 112, 113, 149, 154, 155).

Regarding claim 31, see the rejections of the parent claim concerning the subject matter this claim is dependent upon. VADGAMA further discloses further comprising a scheduling unit which schedules uplink transmissions in dependence on each relative indicator (paragraph 146, 147).

Regarding claim 32, see the rejections of the parent claim concerning the subject matter this claim is dependent upon. VADGAMA further discloses wherein the scheduling unit is arranged to determine a rate and/or time at which data is to be transmitted to the base station based on the or each relative indicator (paragraph 146, 147; time of transmission based on indicator).

Regarding claim 34, VADGAMA discloses a communication system (abstract), comprising: a base station for receiving data from a plurality of user equipments (abstract), the base station comprising a determining unit which determines an amount of data (paragraph 35); a comparing unit which compares an amount of data to obtain a relative indicator (paragraph 38, 41, 75-78, 93-97, 105; comparison of congestion can be based on history and weighted base stations); a first transmitting unit which transmits the relative indicator (paragraph 37, 41); a first receiving unit which receives a signal indicating whether the base station has been selected as an active base station for a user equipment (paragraph 36, 42, 154, 155); and an allocating unit which allocates a

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channel to the user equipment if the base station has been selected as an active base station (paragraph 13, 14, 144, 145, 38, 44; congestion based selection); and a user equipment (abstract) comprising: a data buffer (paragraph 2; a data buffer is inherently necessary when transmitting data from a user terminal to a base station); a second transmitting unit **256, 288** which transmits to a base station information (paragraph 31, 32, 53, 54, 93-97, 106; congestion determination broadcast over the broadcast channel to the mobile devices); a second receiving unit **236, 266** which receives from a base station a relative indicator (paragraph 37, 41); and a selecting unit **248, 278** which selects the base station as an active base station based on the relative indicator (paragraph 31, 32, 53, 54, 99, 112, 113, 149, 154, 155). However, VADGAMA does not expressly disclose wherein the base station comprises: a determining unit which determines the amount of data in the data buffer of each of the user equipments; a comparing unit which compares the amount of data in the data buffers of the user equipments to obtain a relative indicator, the relative indicator indicating how full a user equipment's data buffer is in comparison to the data buffers of the other user equipments; and the user equipment: wherein the transmitting unit transmits to a base station information concerning an amount of data to be transmitted; and wherein the relative indicator indicates how full the data buffer is in comparison to the data buffer of other user equipments served by that base station. In a similar field of endeavor, NAIM discloses a base station comprising: a determining unit which determines the amount of data in the data buffer of each of the user equipments (paragraph 27, 28; mobile station sends information regarding the queue length of the mobile transmitter); a comparing

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unit which compares the amount of data in the data buffers of the user equipments to obtain a relative indicator, the relative indicator indicating how full a user equipment's data buffer is in comparison to the data buffers of the other user equipments (paragraph 31; resource allocation depending on various factors including the amount of data in each station); and a user equipment comprising: a data buffer (paragraph 27); a transmitting unit that transmits to a base station information concerning an amount of data to be transmitted (paragraph 27, 28; mobile station sends information regarding the queue length of the mobile transmitter); and wherein a relative indicator indicates how full the data buffer is in comparison to the data buffer of other user equipments served by that base station (paragraph 31; resource allocation depending on various factors including the amount of data in each station). Therefore it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify VADGAMA to include the teachings of NAIM, since both inventions relate to reducing congestion within a system (see NAIM - paragraph 9 disclosing buffer levels effecting packet congestion and VADGAMA states that various methods of congestion (such as those disclosed by NAIM) can be used for determination of an active base station (VADGAMA, paragraph 86, 87).

7. Claims 8 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over VADGAMA (US 2003/0083069 A1) in view of NAIM et al (US 2002/0093953 A1) and further in view of PARKVALL et al (US 2002/0080719 A1).

Regarding claim 8, see the rejections of the parent claim concerning the subject matter this claim is dependent upon. However, the combination of VADGAMA and



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NAIM does not expressly disclose selecting of a base station is carried out by a radio network controller. In the same field of endeavor, PARKVALL discloses selecting of a base station is carried out by a radio network controller (paragraph 15). Therefore it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the combination of VADGAMA and NAIM to include the teachings of PARKVALL, since allowing a network controller to select a base station is standard in the art and allows a base station determination based on received signals at the controller.

Regarding claim 22, see the rejections of the parent claim concerning the subject matter this claim is dependent upon. However, the combination of VADGAMA and NAIM does not expressly disclose wherein the transmitting unit is arranged to transmit the or each relative indicator to a radio network controller. In the same field of endeavor, PARKVALL discloses wherein a transmitting unit is arranged to transmit the or each relative indicator to a radio network controller (paragraph 15). Therefore it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the combination of VADGAMA and NAIM to include the teachings of PARKVALL, since allowing a network controller to select a base station is standard in the art and allows a base station determination based on received signals at the controller.

8. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over VADGAMA (US 2003/0083069 A1) in view of NAIM et al (US 2002/0093953 A1) and further in view of OYAMA (US 2002/0048258).

Regarding claim 10, see the rejections of the parent claim concerning the subject matter this claim is dependent upon. The combination of VADGAMA and NAIM further discloses wherein a user equipment sends to the base station an indication of the total amount of data to be sent (NAIM – abstract; paragraph 26, 27, 31), however, the combination of VADGAMA and NAIM does not expressly disclose wherein the base station determines the amount of data in the user equipment's data buffer based on the indication of the total amount of data, and the amount of data already received by the base station from that user equipment. In a similar field of endeavor, OYAMA discloses a communication device that determines the amount of data in a device based on an indication of a total amount of data, and an amount of data already received by a communication device from that device (abstract; paragraph 22, 23). Therefore it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the combination of VADGAMA and NAIM to include the teachings of OYAMA, since it has been held that discovering an optimum value (i.e determining a remainder by subtracting an amount from a known total) of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

### ***Conclusion***

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

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TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ARIEL BALAOING whose telephone number is (571)272-7317. The examiner can normally be reached on Monday-Friday from 8:00 AM to 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, V. Paul Harper can be reached on (571) 272-7605. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/VINCENT P. HARPER/  
Supervisory Patent Examiner, Art Unit 2617

/Ariel Balaoing/  
Examiner, Art Unit 2617

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